

# COMMISSION OF THE EUROPEAN COMMUNITIES

COM(89) 614 final

Brussels, 6 December 1989

Proposal for a  
COUNCIL DECISION

authorizing the French Republic to apply  
a measure derogating from Article 2 of  
the Sixth Council Directive (77/388/EEC)  
of 17 May 1977 on the harmonization of the  
laws of the Member States relating to  
turnover taxes

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. By letter received on 29 September 1989, the French Government submitted to the Commission a request for a derogation under Article 27 of the Sixth VAT Directive<sup>1</sup> for a period of three years expiring on 31 December 1992. The derogation is designed principally to prevent certain types of tax evasion or avoidance and secondarily to simplify the procedure for collecting VAT. These fraudulent practices, which have consisted mainly of the issuing of false invoices designed to transfer an entitlement to tax deduction (with the invoiced taxes never being repaid to the Treasury), have in the past caused considerable revenue losses for the Treasury. These practices were perpetrated mainly by small-scale waste recovery operators which had no permanent establishment and which were therefore difficult to monitor.

This derogation from Article 2 of the Sixth Directive is intended not to subject to compulsory taxation all transactions involving supplies of fresh industrial waste and recuperable material. Such transactions should be subject to tax as from 1 January 1990 in accordance with Article 1(2)(a) of the Eighteenth Council Directive (89/465/EEC) of 18 July 1989.<sup>2</sup>

2. The arrangements envisaged by the French Government consist of exempting from VAT:

(1) supplies by:

- firms with an annual turnover of less than FF 500 000;
- firms which do not have a permanent establishment or which, although they have a permanent establishment, recorded a turnover in respect of such products in the previous year of less than FF 6 million, unless they are authorized to subject such transactions to VAT;

<sup>1</sup> OJ No L 145, 13.6.1977.

<sup>2</sup> OJ No L 226, 3.8.1989.

(ii) imported supplies.

3. The French Government also points out that half the firms in the sector, which account for more than 80% of the total turnover, would in future be subject to VAT in respect of such transactions. The transactions not subject to tax would be those carried out by firms operating mostly outside commercial channels; the exemption of their transactions should not therefore entail any distortion of competition. In any case, the value of the recovered product does not escape taxation when sales are made by users of that product.

4. The authorization would be valid until 31 December 1992. Prior to that date, the Commission would present to the Council a report on the application of this authorization.

5. In accordance with Article 27(3) of the Sixth VAT Directive, the other Member States were informed of the French request by letter dated 27 October 1989.

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THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to the Sixth Council Directive (77/388/EEC) of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes - Common system of value added tax: uniform basis of assessment,<sup>1</sup> and in particular Article 27 thereof,

Having regard to the proposal from the Commission,

Whereas, under Article 27(1) of the aforementioned Directive, the Council, acting unanimously on a proposal from the Commission, may authorize any Member State to introduce special measures for derogation from that Directive in order to simplify the procedure for charging the tax or to prevent certain types of tax evasion or avoidance;

Whereas the Eighteenth Council Directive (89/465/EEC) of 18 July 1989<sup>2</sup> abolishes, as from 1 January 1990, the transitional derogation provided for in Article 28(3)(b) of the Sixth Directive, read in conjunction with point 20 of Annex F, which permits Member States to continue to exempt

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1 OJ No L 145, 13.6.1977.

2 OJ No L 226, 3.8.1989.

supplies of recuperable material and fresh industrial waste; whereas the arrangements for taxing such supplies pose problems in France because some waste recovery operators have been accustomed in the past to issue false invoices designed to transfer an entitlement to tax deduction, with the taxes invoiced not being paid to the Treasury; whereas, by letter to the Commission dated 29 September 1989, the French Republic requested authorization to introduce a special measure derogating from Article 2 of the Sixth Directive;

Whereas that special measure consists:

- firstly of exempting transactions carried out by taxable persons whose annual turnover in respect of such products is below a given amount and restricting taxation to transactions carried out by firms which, by their structure, show themselves to be reliable and of good repute in tax matters; the authorities are to check these conditions under an authorization procedure which may involve the provision of a guarantee; and
- secondly of exempting imports;

Whereas this measure constitutes a derogation from Article 2 of the Sixth Directive, according to which all supplies of goods or services effected for consideration within the territory of a country by a taxable person acting as such and all imports of goods are subject to value added tax;

Whereas the authorization requested can be granted under certain conditions;

Whereas the authorization shall be temporary, in accordance with the request made by the Republic of France, whereas this will permit an evaluation of the effects of the measure after a certain period of application;

Whereas the Commission will present a report to the Council, before 31 December 1992, on the application of this authorization perhaps accompanied by a proposal for a Decision to prolong it;

Whereas this derogation will not have a negative effect on the European Communities' own resources accruing from value added tax;

Whereas the other Member States were informed of the French Republic's request on 27 October 1989,

HAS ADOPTED THIS DECISION:

### Article 1

By way of derogation from Article 2 of the Sixth Directive, the French Republic is hereby authorized, until 31 December 1992 and in respect of fresh industrial waste and recuperable material, to exempt from value added tax:

(1) supplies made by:

- firms whose annual turnover is less than FF 500 000;
- firms which do not have a permanent establishment or which, although they have a permanent establishment, have achieved in the previous year a turnover figure in respect of such products of less than FF 6 million, unless they are authorized to subject such transactions to VAT;

(ii) imported supplies.

### Article 2

In the light of a report from the Commission on the application of the authorization referred to in Article 1, accompanied, where appropriate, by a proposal for a decision, the Council, acting on the basis of that proposal, shall determine, before 31 December 1992, whether the said authorization is to be extended.

### Article 3

This Decision is addressed to the French Republic.





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# DOCUMENTS

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